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Dated: 10-3-03

Signature: [Signature]

(Michael Boyd)

Docket No.: 377882001720  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Gary VAN NEST et al.

Application No.: 09/927,884

Confirmation No.: 5141

Filed: August 10, 2001

Art Unit: 1645

For: IMMUNOMODULATORY FORMULATIONS  
AND METHODS FOR USE THEREOF

Examiner: P. Duffy

**RESPONSE TO RESTRICTION REQUIREMENT**

Mail Stop Non-Fee Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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Dear Sir:

This is in response to the Office Action mailed September 9, 2003 (Paper No. 12) which sets forth a restriction requirement for pending claims 1-84 in the above-identified application. A response to this action is due October 9, 2003. Accordingly, this response is timely filed.

Restriction has been required as between the following allegedly distinct groups of inventions:

- I. Claims 1-29 and 56-79, drawn to an immunostimulatory sequence linked to a nonbiodegradable microcarrier wherein the immunostimulatory sequence comprises the sequence 5'-C,G-3'.
- II. Claims 30-55, drawn to methods of modulating an immune response in an individual using an immunostimulatory sequence linked to a nonbiodegradable microcarrier wherein the immunostimulatory sequence comprises the sequence 5'-C,G-3

Applicants hereby elect Group I (claims 1-29 and 56-79), without traverse. Applicants expressly reserve their right under 35 U.S.C. § 121 to file a divisional application directed to the nonelected subject matter during the pendency of this application, or an application claiming priority from this application.

Should the elected product claims be found allowable, Applicants reserve the right to request rejoinder of withdrawn process claims which include all the limitations of the allowable product claim for examination (M.P.E.P. §821.04).

With regard to Group I, the Examiner required an election of a species of a polynucleotide of 7 nucleotides in length. Accordingly, Applicants hereby elect the 7 nucleotide sequence "TCGTCGA" as described, for example, at page 24, line 24. Applicants request that, upon allowance of a generic claim, the remainder of the species be included as permitted by 37 C.F.R. § 1.141(a).

Applicants request reconsideration of the restriction requirement and examination of the elected subject matter on the merits.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 377882001720. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: October 3, 2003

Respectfully submitted,

By Karen R. Zachow  
Karen R. Zachow, Ph.D.

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1645

PTO/SB/21 (08-03)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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# TRANSMITTAL FORM

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Total Number of Pages in This Submission

3

Application Number

09/927,884

Filing Date

August 10, 2001

First Named Inventor

Gary VAN NEST

Art Unit

1645

Examiner Name

P. Duffy

Attorney Docket Number

377882001720

## ENCLOSURES (Check all that apply)

☐ Fee Transmittal Form

☐ Fee Attached

☒ Amendment/Reply (2 pages)

☐ After Final

☐ Affidavits/declaration(s)

☐ Extension of Time Request

☐ Express Abandonment Request

☐ Information Disclosure Statement

☐ Certified Copy of Priority Document(s)

☐ Response to Missing Parts/Incomplete Application

☐ Response to Missing Parts under 37 CFR 1.52 or 1.53

☐ Drawing(s)

☐ Licensing-related Papers

☐ Petition

☐ Petition to Convert to a Provisional Application

☐ Power of Attorney, Revocation Change of Correspondence Address

☐ Terminal Disclaimer

☐ Request for Refund

☐ CD, Number of CD(s) \_\_\_\_\_

☐ After-Allowance Communication to Group

☐ Appeal Communication to Board of Appeals and Interferences

☐ Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)

☐ Proprietary Information

☐ Status Letter

☒ Other Enclosure(s) (please identify below):

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Remarks

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## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name

MORRISON & FOERSTER LLP  
Karen R. Zachow, Ph.D. - 46,332

Signature

*Karen R. Zachow*

Date

October 3, 2003

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